

EXECUTIVE SUMMARY

In June 2000, the Judicial Council of California contracted with Policy Studies Inc. (PSI) to conduct a review of California's child support guideline. This review was conducted in compliance with federal and state law. Federal law (45 CFR 302.56) requires states to examine case data at least every four years to ensure that application of the guideline results in appropriate child support awards. State law (Fam. Code, § 4054(a)) also requires the Judicial Council to periodically review the statewide guideline and recommend appropriate revisions to the Legislature.

The review conducted in 2000 included the following activities:

- The collection and analysis of child support order information from case files;
- A review of the provisions that other states' guidelines make for selected issues, in particular issues related to low-income obligors, additional dependents, and the use of gross or net income to calculate the support obligation;
- An analysis of the costs of raising children based on the most recent economic evidence about those costs;
- The administration of a survey to people who use the guideline (for example, judges, family law attorneys, and advocates for parents and/or children) to establish and modify support orders; and
- Focus groups and interviews with parents (both custodial and noncustodial) who have experience using the guideline.

The Judicial Council requested that the study activities particularly address three key issues of special interest to the Legislature: (1) the treatment of low-income obligors, (2) the use of gross income versus net income as a base to use in establishing child support, and (3) the treatment of additional dependents.

REVIEW OF CASE FILES

The key purpose of the case file review was to determine how the provisions of the guideline are being applied and how frequently and for what reasons courts are deviating from the guideline in establishing child support orders. The review, conducted in nine counties, consisted of a random sample of established or modified child support orders filed during calendar year 1999. The sampling methodology and case review procedures mimicked the methodology and procedures the Judicial Council used for its review of case files in 1998.

Results From the Analysis of Case Files

The most significant findings from the case file review are highlighted below.

- Most cases follow the child support guideline.
- Deviations are less likely in orders established or modified by district attorney's offices.
- The most common reason for deviation was agreement between the parents.
- Permissible adjustments for hardship, additional dependents, and spousal support were infrequently noted.
- The low-income adjustment was seldom applied in cases that qualified for that adjustment.
- Additional support was ordered in some but not all cases.
- The father owed the mother support in most of the orders examined.
- Income information was frequently missing, especially in default and stipulated orders.
- Income was imputed or presumed in many orders established by the district attorney's office.
- Most orders entered through the district attorney's office were by default, whereas most orders entered outside the district attorney's office were by stipulation.
- Most parents were not represented by an attorney.
- Most orders involved one child.

REVIEW OF PROVISIONS IN OTHER STATES' GUIDELINES

California state law requires the guideline review to include an analysis of guidelines and studies from other states. An analysis of all the provisions in every state's guideline was beyond the scope of the current study. Thus, this study focused on the three main issues of legislative interest: how other states deal with low-income obligors and additional dependents and whether they use net or gross income as the base from which to compute a support obligation.

Adjustments for Low-Income Obligor

Low-income adjustments in other states generally take two forms:

- Minimum order amounts for income above a state-specified threshold; and
- Additional adjustments above the income threshold when the minimum order is applied.

Use of Gross Income Versus Net Income as a Base to Use in Establishing Child Support

Most states—28 states and the District of Columbia—base their guidelines on gross income. California and 21 other states base their guidelines on net income. A handful of net income states have a standardized method for arriving at net income from gross income.

Treatment of Additional Dependents

Only five states do not address the issue of additional dependents; they do not take into account children from prior or subsequent relationships (additional dependents) in calculating a child support order. In 21 states, including California, additional dependents are grounds for a deviation. In the remaining 24 states and the District of Columbia, a formulaic adjustment for additional dependents is presumptive. The most common formula to adjust for additional dependents subtracts a “dummy order” from the eligible parent’s income prior to the calculation of the support order amount. The dummy order is what the eligible parent would theoretically owe in child support for the additional dependents if the guideline was applied.

ANALYSIS OF CHILD-REARING COSTS

In developing child support guidelines, states inevitably confront the question: How much does it cost to raise a child? Although this question is seemingly simple, it has complex ramifications, both for courts trying to determine child support in individual cases and for economists seeking to estimate the average costs of child rearing across population groups. The difficulty in determining the costs of a child arises because many costs are shared with other household members. Indeed, the largest categories of household expenditures (food, housing, transportation, and household furnishings) are made on behalf of all family members. It is therefore not possible to observe directly the portion of the total household budget that is spent on any individual, in particular that portion spent on a given child who is the subject of a child support action.

This study examined three approaches to estimating the proportion of family spending on children: (1) the approach used by the U.S. Department of Agriculture (USDA), (2) the Engel approach, and (3) the Rothbarth approach. The estimates of child-rearing costs using these approaches are developed from national data on consumption patterns of households with and without children. These data are collected by the Bureau of Labor Statistics (BLS) in its Consumer Expenditure Survey (CEX). The CEX is an exhaustive list of expenditures by item and by household size for a nationally representative sample of American families. No state collects expenditure data that are as exhaustive or that are collected on such a large sample

size. As a result, the CEX is the only available survey suited for estimating household spending patterns.

USDA Approach

The USDA approach to the problem of how to allocate costs between parents and children is to determine whether the adults or the children are the primary beneficiaries of the goods. The USDA excludes goods that are exclusively adult goods (adult clothing, tobacco and alcohol purchases, personal insurance, and miscellaneous expenditures) from any allocation to the children. On average, these goods account for 6–7 percent of a household’s budget. Then the USDA identifies goods that are exclusively consumed by the children, which on average account for about 5 percent of the household’s budget. For the remaining 88 percent of the budget, the portion allocated to the children must rely either on information from other studies or on the use of a per capita allocation. Data from other national studies are used to allocate about 38 percent of household expenditures, and the remaining costs are allocated on a per capita basis.

While the approach taken by the USDA is straightforward and relatively easy to understand, its main weakness is the rather arbitrary manner in which it allocates roughly one-half of the family’s spending. The use of a per capita allocation brings the whole methodology into question and can lead to overstating how much parents truly spend on their children.

Engel and Rothbarth Approaches

An alternative approach to the allocation problem is to focus on how parents reallocate consumption within the household in order to make room for their children’s consumption. By comparing the consumption decisions of parents with children and married couples without children, the economic costs of the children can be indirectly observed from the differences in consumption patterns. This comparison between households with and without children requires that the standard of living—or the family’s well-being—be held constant across the two households, which the Engel and Rothbarth approaches do using different measures of well-being.

The Engel approach uses expenditures on food at home as a proxy for household well-being. This approach assumes that (1) as total spending increases, the budget share devoted to food at home should decline, leaving room for expenditures on other goods, and (2) the food share of the budget should increase when family size (number of children) increases. Data on household expenditures show both of these conditions to be true.

The Rothbarth approach uses expenditures on adult clothing as a proxy for household well-being. This approach assumes that (1) adults will spend more on their clothing as total spending increases and (2) as household size increases, adults will reduce their spending on adult clothing. Expenditure data support these assumptions.

Under both the Engel and Rothbarth approaches, the expenditures allocated to children can be derived by measuring the households' allocation of expenditures on food and adult clothing, respectively, for different household sizes and different levels of spending. The mathematics involved in calculating these estimates are detailed in the report.

Estimates of Parental Spending on Children

The estimates of parental spending on children using CEX data from 1996–1997 are shown in the table below for the three approaches to estimation and for different numbers of children. For comparison purposes, the table also displays the proportional spending on children using a purely per capita approach to allocating household expenditures. The estimates assume both parents are in the household.

Proportion of Household Expenditures Allocated to Children			
Approach	Number of Children		
	One	Two	Three
Per capita (CEX data)	33.3%	50.0%	60.0%
USDA	30.3%	44.9%	53.5%
Engel	30.1%	43.9%	52.0%
Rothbarth	25.6%	35.9%	41.6%

SURVEY OF GUIDELINE USERS

The primary purpose of the guideline users' survey was to learn stakeholders' views about (1) what they believe is working well and not so well with the existing guideline, (2) what they see as the guideline's strengths and weaknesses, and (3) what features of the guideline they believe could be improved. In addition to capturing information about the three key issues that were the main focus of the study, the survey asked questions about a wide range of other issues, including how to deal with high-income cases, shared parenting, and "add-ons" to the basic support obligation (for example, for child care or extraordinary medical expenses for the children who are the subject of the support order).

The Guideline's Strengths and Weaknesses

Overall, respondents rated the guideline as mostly unfair to the noncustodial parent and the parents' children from other relationships and mostly fair to the custodial parent. The fairness rating they gave to the children for whom support was established was in the middle of the fairness scale, thus neither fair nor unfair. The general perceived lack of fairness was further evidenced in what respondents believed about the level of support orders—whether they are too high, about right, or too low. A majority of respondents (60 percent) believed the support orders established using the guideline were too high. About a quarter of all respondents (28 percent) believed they were about right, and only 4 percent believed they were too low.

In reporting about the guideline's strengths, respondents most frequently mentioned that the guideline (1) is consistent, uniform, and objective (22 percent); (2) yields predictable results (11 percent); (3) is fair to children (7 percent); and (4) yields reasonable support amounts (5 percent). Respondents also cited the guideline for its ease of use (7 percent), its use of net income (9 percent), its consideration of each parent's time with the children (10 percent), and the judicial discretion the guideline allows to deal appropriately with each family's unique circumstances (6 percent).

Respondents mainly faulted the guideline for yielding support orders they believed were too high (19 percent) and for being too rigid and inflexible (13 percent). They also mentioned special factors about the guideline they did not like, such as the time-sharing adjustment (13 percent), which many believed encourages conflict between the parents; the additions for child care and medical costs (11 percent), which they believe are unfair; and the low-income adjustment (7 percent), which they believe is inadequate. Yet, they also were disappointed that the guideline does not address other special factors, such as rent, transportation, and excessive visitation costs.

FOCUS GROUPS OF PARENTS

Parents play an important role in any review of the child support guideline because they are directly affected by how the guideline is applied by the court to calculate a child support order in their case(s). This study made a special effort to capture parents' thoughts about the guideline, especially in how the guideline's provisions are applied and what impact that application has had on their particular situations. The approach the study used to gather data also asked parents what recommendations they had for changing the guideline that would make it easier to use, be more equitable in its outcomes, and yield support orders that were in the best interest of the children.

The focus group discussions and interviews yielded a rich set of parental perspectives about the child support guideline as a tool for calculating a support obligation and for defining an approach to complete that process. They also provided some insight into problems parents have using the guideline provisions to meet their specific circumstances and ideas for effecting changes that would make the guideline more useful to them.

Many of the issues parents raised in the focus groups were similar to the comments made in the guideline users' survey. In particular, this included (1) comments about the guideline resulting in levels of support that are too high, (2) a preference for using net income as a base to calculate the obligation, and (3) indications that the time-sharing factor in the guideline has merits and limitations. Also like guideline users, parents had few recommendations for changing the current guideline adjustment for low-income obligors or the provisions for additional dependents.

RECOMMENDATIONS

The study recommendations focused on changes needed regarding treatment of low-income obligors, the use of gross income versus net income as a base to use in calculating child support, and treatment of additional dependents.

Treatment of Low-Income Obligor

Income Threshold

If California intends to include an income threshold in the child support guideline for application of the low-income adjustment, then the threshold now used to determine the obligor's eligibility—\$1,000 net income per month—should be reviewed. It is higher than that of most states, but close to the amount in high-income states (for example, Connecticut and New York). Also, it exceeds the federal poverty standards for a single person. Nevertheless, the variability in the cost of living among California counties that survey respondents highlighted is appreciated. In addition, as the obligor's income approaches \$1,000 per month, the amount of the adjustment becomes increasingly small. Under California's new minimum-wage law, many full-time minimum-wage earners will be ineligible for the adjustment or receive only a nominal adjustment.

One difficulty with establishing a fixed threshold is that anyone whose income is even slightly above the threshold may not qualify for a low-income adjustment. Another approach, which could be used either instead of the low-income adjustment or in addition to it, is to incorporate a self-support reserve directly into the guideline to ensure that the obligor has enough income after payment of the support obligation

that he or she can maintain at least a minimum standard of living. A discussion of how a self-support reserve could be incorporated into the existing guideline is provided below.

Adjustment Formula

As previously illustrated, there are situations under the existing guideline where payment of the guideline-determined amount would leave the obligor with income below the poverty level for one person. The Legislature should consider the following options as potential approaches to addressing this situation, but these approaches could be considered in combination with other adjustments mentioned in this section:

- Replace Family Code section 4055(b)(7) with an adjustment based on a self-support reserve or adopt a self-support reserve in addition to the low-income adjustment. There are two methods of applying a self-support reserve.

One method is to compute the low-income-adjusted order as a proportion of the difference between obligor net income and the self-support reserve. The proportion could be on a sliding scale that increases with the number of children (for example, 90 percent for one child, 91 percent for two children, 92 percent for three children and so forth).

To illustrate how this would work, assume an obligor has three children and the obligor's net income is \$1,100 per month. The obligor's income available for child support would be \$384 (\$1,100 – \$716, which is the federal poverty level for one person). Under the low-income adjustment, the support order for three children would be 92 percent of this amount, or \$353 per month. This amount would be compared to the guideline-determined amount, and the lower of the two amounts would become the support order.

The other approach is to merely calculate guideline support using all of the obligor's actual income. The guideline support is then subtracted from net income and if the amount remaining is less than the self-support reserve, the guideline support is adjusted downward until the self-support reserve amount is reached. This is similar to the method adopted by the former Agnos Child Support Standards Act of 1984.

To illustrate how this would work, an obligor with \$1,100 net monthly income and three children would pay \$528 per month in child support by the current guideline. The obligor would be left with \$572 per month after support. If a federal poverty level self-support reserve of \$716 was used, the child support

would have to be reduced by \$144 to leave the obligor with the necessary self-support reserve. The resulting child support order would be \$384 per month.

No specific recommendation is made regarding the appropriate amount of any self-support reserve. Comments received during the comment period clearly indicate that a careful balance must be reached between the need to leave obligors with sufficient income to meet their most basic needs and the need to provide as adequately as possible for children.

Other Logistics of the Proposed Formula

The proposed low-income adjustment is an easy formula to program into an automated guideline calculation. It could also be easily incorporated into a guideline worksheet. An example of such a worksheet is provided in Exhibit 4-5.

Applying the low-income adjustment after additions for other child-related expenditures are added on (for example, for child care, health-care costs, education, and special needs) can be problematic. Add-ons are often not set at a dollar amount (they are typically set at 50 percent of actual costs), which would make it difficult to calculate the low-income adjustment after the consideration of additional costs. In the case of uninsured health-care costs, the most frequently applied add-on, this may vary substantially from year to year.

Discretionary Adjustment

If California decides to adopt a self-support reserve or maintain some form of the current low-income adjustment or use a combination of both approaches, these adjustments should be made presumptive to ensure that they will be applied. The intent of enacting a low-income adjustment or self-support reserve is to benefit those who meet the threshold criteria. The current law requires a finding as to why the low-income adjustment is being applied, which may discourage its application. Further, child support orders entered by default will rarely have the low-income adjustment unless it is made presumptive. This situation creates an additional administrative burden on the courts when these orders must be set aside or subsequently modified. The Legislature should consider adopting or amending current law to make application of these adjustments presumptive subject to proof that the adjustment is not appropriate in a particular case. The current low-income adjustment allows the court to adjust the support within a specified range, which gives the court greater flexibility to consider the overall circumstances of a particular case. However, if this adjustment is made presumptive, the Legislature should consider providing that in default cases or proposed judgments under Family Code section 17400 the low-income adjustment should be set at the maximum amount allowable in order to provide even results on similar facts statewide.

Presumed Income

Application of California's presumed income results in order amounts that are significantly higher than those ordered in the rest of the nation. Among other states, 35 of them base the presumed order on the assumption that the obligor is employed full time at minimum wage. This contrasts with the current California approach, which presumes a monthly income of \$1,966 (for fiscal year 1999–2000) when calculating support for one child. The Legislature should review the current presumed income approach to determine if alternatives would yield a more appropriate child support order. If a lower presumed income was adopted, provisions could be considered for allowing either parent to be able to set aside the judgment, within a clearly circumscribed time period, and recalculate support based upon information subsequently provided.

It is also recommended that the results from the Urban Institute's study on child support debt be considered when released. It may provide further insights on the ability to pay in these presumed income cases.

Recommendations Regarding Use of Gross Income Versus Net Income

The California child support guideline should continue to rely on disposable net income as the base used to compute a support obligation amount. Disposable net income bases support on the actual amount of money that is reasonably available for support. Net income excludes mandatory deductions such as retirement or union dues. Net income also accounts for the differences in tax consequences based on such factors as the availability of dependency exemptions. This approach takes into account that people who are similarly situated with regard to gross income may have quite different levels of net income based on the nature of their deductions and their individual life circumstances.

The Legislature should, however, review the issue of how to allocate the tax consequences between a remarried party and his or her new spouse for the purposes of determining the net disposable income of that remarried party. In resolving this issue, the Legislature should carefully review the various alternatives to determine the most equitable statutory solution (see discussion in Chapter Four). The current gap in guidance in this area can result in a lack of uniform application of the guideline statewide.

Recommendations Regarding Additional Dependents

The California child support guideline's two existing provisions regarding additional dependents appears to adequately address the issue of additional dependents. The

guideline should continue to allow a mandatory deduction for child support actually being paid for a child other than the child or children for whom support is being established. The guideline should also continue to allow a hardship deduction for other children (and/or parents) who the party is legally obligated to support and who reside in the home of that party. It should be noted, however, that the latter deduction is discretionary with the court. The court may disallow consideration of the deduction for other dependents completely or allow a deduction in any amount up to the maximum allowable. This discretion allows the court to take into consideration the wide range of circumstances where other dependents are involved. For example, the court can differentiate the amount of deduction for another dependent not the subject of the order who is solely supported by one parent or supported by two parents.

The Legislature should consider correcting a minor mathematical error that occurs if the hardship deduction exceeds the parent's net income, which results in a negative net disposable income for the eligible parent. This can be easily corrected by limiting the minimum amount of net disposable income to \$0. In other words, a parent's net disposable income used in a guideline calculation can never be less than \$0. Similar provisions exist in other states.

